



Planning the Balance For A Sustainable Florida Keys Initiative



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Planning the Balance : A Sustainable Florida Keys

Introduction:

Monroe County's taxpayers are currently facing a monetary liability estimated to exceed 1 billion dollars. This exposure is due to the County's compliance with mandated environmental protection. This amount surpasses any known liability shouldered by any one local government in protecting nationally significant environmental resources. It is difficult to argue that Monroe County is not a national leader in environmental planning initiatives. This leadership was required to meet the challenging demands of balancing development and conservation. Since the designation of Monroe County as an Area of Critical State Concern, the County's taxpayers have spent millions of dollars to defend against takings-related claims. This County and State have spent nearly \$200 million in property acquisition and yet nearly 7,000 parcels or 7,490 acres remain identified for purchase in the Monroe County Land Acquisition and Management Plan. It is time to start planning the balance between the economics of development and the liability of conservation to create a sustainable Florida Keys.

Background:

Monroe County and the Florida Keys realized tremendous growth in the mid to late 1980's with a peak new residential permit rate of over 1600 per year in 1986. This was followed by a downturn in the market which culminated in 1992 with the implementation of the Rate of Growth Ordinance (ROGO). ROGO created a system by which the limited number of allocations issued by the State of Florida to Monroe County each year are distributed. Intended as a tool to guarantee hurricane evacuation clearance times of less than 24 hours, the focus of ROGO became much greater over its lifespan. ROGO not only has the burden of limiting growth but also deciding which applicants will receive an allocation and when. This is done through a competition based on the scoring and ranking of the building permit application. The score is based on 18 separate scoring criteria. Many of these criteria implement State and Federal environmental laws and regulation .



A line graph demonstrating the effectiveness of ROGO as a growth management tool.

ROGO has successfully slowed growth to seemingly manageable rates. The 18 site specific criteria which make the base of the competitive system, had an unintended consequence of allowing the fragmentation of threatened and endangered species habitat. Scoring based on current site conditions of a 50 x 100 lot allowed for anomalies in habitat pattern to remain anomalies. Recently disturbed sites became permanently disturbed sites. In an effort to address this serious side effect the Monroe County Growth Management Division took another brave new step in conservation planning and developed the Tier System.





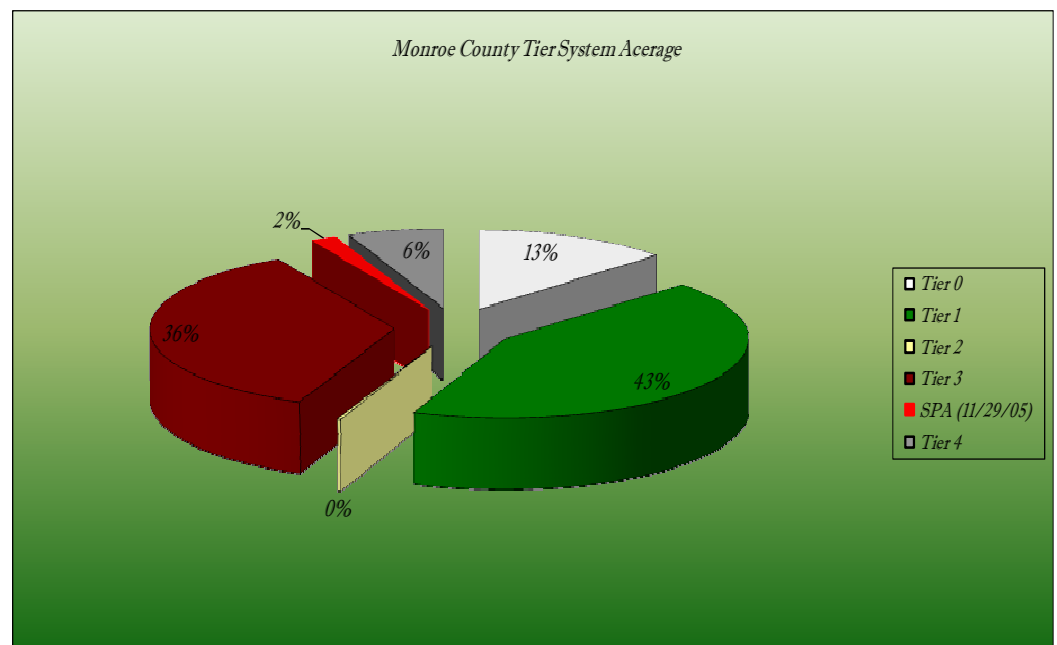
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Background Continued:

The Tier System is designed to supplement ROGO. It has been carefully crafted to address the two major shortcomings of ROGO: complexity and site specific review. It is made up of 6 tiers: Tier 0, 1, 2, 3, 3a-Special Protection Area (SPA), and 4. Tiers 1 through 3a are development tiers, Tier 0 is submerged land and rights of way, and Tier 4 is military lands. Properties were grouped by the Planning Department based on specific criteria for each Tier with strong emphasis placed on community wide conditions versus site-specific conditions. This grouping eliminated the need for a complicated scoring system involving 18 criteria and replaced it with a much more simple scoring which is based on Tier designation. The development tiers 1-3a are broken down into levels of environmental sensitivity. Tier 1 is the most environmentally sensitive and 3 is the least sensitive with 3a being a special subsection to protect small upland native habitat areas.

Like ROGO, the Tier system discourages development in environmentally sensitive areas through the award of less points to a Tier 1 property than a Tier 3 property, as well as through a limitation on the number of permits which can be issued in Tier 1.

The following chart represents the acreage distribution amongst the Tiers:



While the new and innovative Tier System is a necessary growth management control to balance development with conservation of nationally significant resources, it does come at a cost that cannot be borne by the County alone. With a more clear separation between those properties which are viewed as appropriate for continued development (Tier 3) and those which are not (Tier 1) comes a significantly increased liability for takings claims where the County is named as the Defendant.



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Background Continued: Inverse Condemnation

The looming fiscal crisis linked to the imposition of the Area of Critical State Concern designation and the Tier System must be addressed. It is not enough to rely on increases in funding for the acquisition of Tier I properties by means other than direct condemnation. The reality is that landowners often reject government offers to purchase in favor of instituting inverse condemnation proceedings with hopes of obtaining larger compensation awards. Alternatively, property owners who believe their properties to have been “inordinately burdened” by government regulation, may have a statutory cause of action for damages and other relief under Florida’s Bert J. Harris Private Property Rights Protection Act.

Monroe County is currently defending numerous inverse condemnation cases. One case seeks class action status for over 1700 parcels of land located in Tier 1 on Big Pine and No Name Keys. The Tier System will continue to give rise to hundreds if not thousands, of similar actions. While generally successful in defending takings cases in the past, the County has not always been able to escape liability. In one “temporary takings” case which settled in 2003, the County was forced to pay close to 6 million dollars to a property owner whose property rights were found to have been “taken” by the environmental protection regulations adopted by the County at the behest of the State of Florida and the Federal government.

As the County continues to adopt regulations designed to implement the environmental policies of the State and Federal governments, it will be faced with a growing number of cases brought by property owners. The County’s liability exposure is estimated to exceed 1 billion dollars. With the most recent census estimates advising that the County’s population has fallen below 75,000, it is unrealistic to expect the Key’s dwindling number of residents to shoulder the burden for acquiring properties that are of environmental significance to the entire nation.



The US Supreme Court
Building in
Washington DC

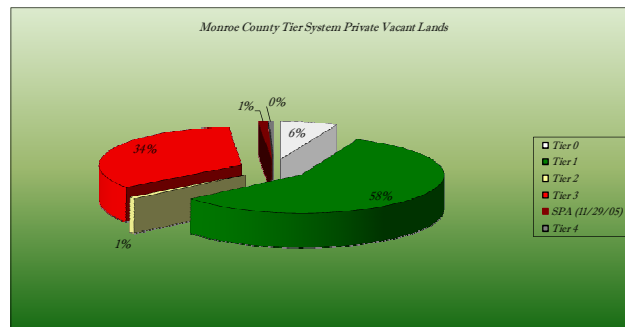




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The Proposal: Planning the Balance

The initiative is a two (2) phase approach to planning the balance between the economics of development and the liability of conservation. Phase one (1) requires Monroe County to continue its role as a leader in conservation initiatives by partnering with the State of Florida in seeking National Park status for all Tier 1 & 2 designated properties. The second phase provides for a sustainable development plan for all of Tier 3 with the State of Florida releasing the required allocations to Monroe County for rational distribution. This approach is intended, in part, to more equitably apportion costs for environmental benefits that are enjoyed by the entire nation.



Phase 1: Federal Protection

The National Park Service (NPS) was established in 1916 and currently protects over 84.4 million acres within 391 designated areas (58 of which are parks) spread across every state in the union with the exception of Delaware. The last addition to the NPS as a National Park was in 2000 with the acceptance of Cuyahoga Valley National Park in Ohio.

The burden of purchasing all the lands in the Florida Keys which are designated as environmentally sensitive and set for purchase is far too great for the local government to bear. Monroe County has spent millions of dollars in defending takings related cases and payouts for such cases since being designated an Area of Critical State Concern. Monroe County has spent to date \$32 million in conservation related land acquisition and the State of Florida has spent over \$168 million to date on conservation related acquisition. As shown above, 58% of all privately owned vacant lands are designated Tier 1 and identified for purchase. This amounts to a total remaining liability for purchase which could be in excess of \$1 billion. The tax payers of Monroe County cannot meet this burden.

Partnering with the Federal government and the NPS will allow Monroe County to tap a project specific acquisition budget which typically surpasses the billion dollar mark, and which is allocated specifically for the purchase and conservation of environmentally sensitive lands. This new partnership will create new purchase avenues for property owners to recoup investment costs and property values.





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Phase 1: Federal Protection Continued

This Nation's parks have been called the soul of our country and Monroe County's conservation land could be the next addition. The first step is a study of the resource conducted by the NPS and its many professionals. These professionals evaluate proposed additions based on criteria set by the US congress. Below is an excerpt from the NPS website detailing selection criteria:

Criteria for Parkland



To receive a favorable recommendation from the Service, a proposed addition to the national park system must (1) possess nationally significant natural or cultural resources; (2) be a suitable addition to the system; (3) be a feasible addition to the system; and (4) require direct NPS management, instead of alternative protection by other public agencies or the private sector. These criteria are designed to ensure that the national park system includes only the most outstanding examples of the nation's natural and cultural resources. They also recognize that there are other management alternatives for preserving the nation's outstanding resources.

An expanded version of these criteria for inclusion may be found at:
<http://www.nps.gov/legacy/criteria.html>

Following the receipt of a favorable report from the NPS on our proposed addition to the system, Monroe County will need to achieve the one hurdle yet to be attempted by our leadership. An official Act of Congress is required to solidify the addition of a new area into the National Park System. When evaluating the 4 criteria for selection above, few can argue against the national significance of our threatened and endangered species habitat areas. Sandwiched between three existing national park areas, (Everglades National Park, Biscayne National Park and Dry Tortugas National Park) it is easy to see that Monroe County would be a feasible addition to the system. The burden of the liability associated with preserving these areas of Monroe County designated as habitat for threatened and endangered species by the United States Fish and Wildlife Service is simply too great for the 75,000 tax payers of Monroe County to bear. To protect this national treasure will require federal assistance only offered through the National Park Service.

Additional avenues exist for Federal protection. These include such designations as national seashore, national monument, national preserve, and national refuge. Each utilize similar designation criteria as a national park but with slightly less involved declaration procedures. It is also important to note that existing park boundaries could be expanded to encompass portions of Monroe County. However, few of these alternative protections have the acquisition authority reserved for the highest honor our nation can bestow, a national park declaration.





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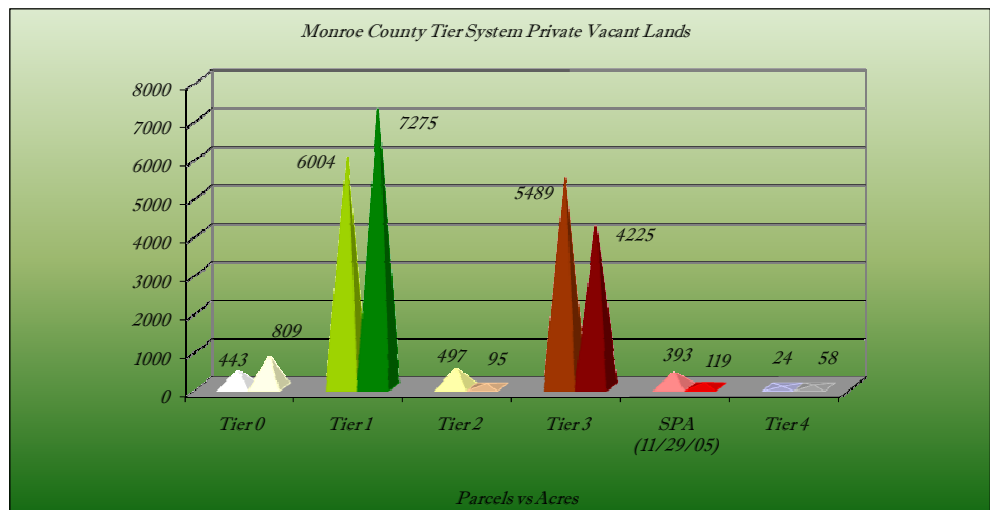
Phase 2: Planned Development

Balancing the total conservation strategy of Tier 1 is a planned development of the remaining Tier 3 properties. Monroe County should seek, through its partnership with the State of Florida, approval for planned development of all remaining, appropriate, Tier 3 properties. Currently there are approximately 5,489 privately owned vacant Tier 3 properties. Of these, 3,551 are currently zoned Improved Subdivision which has a residential density of one (1) dwelling unit per lot. The remainder of the Tier 3 property will require detailed analysis to calculate the build out potential based on open space requirements and habitat restrictions. Our current projections for build out are approximately 4,000 new residential permits. This number will likely be reduced as we are able to confirm site specific conditions and complete a more thorough analysis of Tier 3 areas.

Monroe County would still be required to allow development at controlled rates through further implementation of the Florida Keys Carrying Capacity Study. The rate of permit release would be based on three controlling factors, the market, hurricane evacuation, and infrastructure availability.

With the tremendous financial burden of liability removed and legal costs reduced, the County would be free to invest in infrastructure renewal and improvement projects. Hurricane evacuation times as a limiting factor will likely always be a growth control in this County. However, the limit should be based on the best available data and scientific analysis. The State of Florida and Monroe County should further partner to complete a demographic analysis of Monroe County's population. We would expect to see trends toward an increase in seasonal occupancy and a decreased overall population. Both are factors that will contribute to the reduction of evacuation times.

The following chart details the breakdown of parcels versus acres in each Tier for private vacant lands in Monroe County:





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Conclusions:

The time has come to take the final step toward establishing a balance between conservation and development in the Florida Keys. Monroe County is prepared to confront this challenge by determining its build out capacity, and creating ultimate protections for threatened and endangered species habitat found only within our tropical paradise. This can be achieved by completing the Planning the Balance initiative establishing the 59th National Park, or other similar designation, here in Monroe County and providing for a sustainable controlled development plan.

This plan benefits every interested stakeholder. The environmental community will be excited about the ultimate protection of threatened and endangered species habitat by the federal government. The development community will be excited about a faster process and a guaranteed outcome. The local community will be excited about the prospect of maintaining community character and curtailing ever expanding development boundaries. The economists will be excited about expanding the newly blossoming ecotourism trends that will be bolstered by this newest national treasure. The taxpayers will be excited about avoiding a potentially crippling burden in monetary liability while still maintaining quality of life.

Monroe County, the State of Florida, and the Federal Government provide necessary leadership in environmental planning and conservation efforts. We have no choice but to continue those roles by being partners in "Planning the Balance For A Sustainable Florida Keys."



Planning the Balance means protecting our paradise and building our future.

